IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

Notice of Motion No.1956 of 2007
IN
Summary Suit No.1908 of 2006

Mrs.Panbai M. Shah & Anr. .. .. Plaintiffs
v/s.
Mr.Abdul Hussain Unnwala & anr. .. .. Defendants

W I T H

Notice of Motion No.1957 of 2007
IN
Summary Suit No.1937 of 2006

Mr.Bharat M. Shah. .. .. Plaintiff
V/s.
Mr.Abdul Hussain Unnwala & anr. .. Defendants

Mr.Ashok M. Saraogi with Mr.S.K. Chaurasia for Plaintiff.

Mr.Cyrus Ardeshir i/by M/s.Pardiwala & Co. for Defendants.

CORAM : SMT.ROSHAN DALVI, J.

Dated : 6th August, 2007

P.C. :

1. A summons for judgment was taken out in both the

above Suits. The summons for judgment was disposed of with unconditional leave granted to the Defendants to file their Written Statement upon an observation that the Suit is not maintainable as a Summary Suit. Written Statement has been filed. Both the above Motions are taken out thereafter for a judgment on admission under the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908.

2. It is contended on behalf of the Plaintiffs that the liability of the Defendants is admitted by the Defendants in the Written Statement and that the Defendants have wrongfully contended that the amount admittedly received by the Defendants was to be refunded after 5 years. The Plaintiffs, therefore, contend that upon the liability being admitted, the judgment on admission should be passed without waiting for the period of 5 years, as alleged in the Written Statement.

3. Under the provisions of Order XII Rule 6 of the Code of Civil Procedure, the admissions of fact are required to be made in the pleading or otherwise, orally or in writing by the

Defendants. Upon seeing such admissions, the Court may pass such order or give such judgment as it may deem fit having regard to such admissions. The admissions upon which a judgment or a decree is sought, must, therefore, be clear, express, unambiguous admissions of fact. They essentially must require the admission of liability to be discharged *in presenti*.

4. My attention has been drawn by Mr.Saraogi on behalf of the Plaintiffs to paragraphs 9(c) and 9(g) of the Written Statement of the Defendants. These paragraphs show that one Jayashree Shah was admitted to the partnership of Defendant No.2 on 26,.11.2001. She brought in a capital of Rs.10 Lacs, which she represented was an interest free loan not repayable for a period of 5 years. She represented that she would not be liable to bear losses of the Firm as it would be her sole responsibility of returning/repaying Rs.10 Lacs, so procured by her. Consequently, the said sum of Rs.10 Lacs was received in the Firm by way of capital of the said

partner Jayshree Shah. The Firm stood dissolved on 10.9.2004.

5. In any case, the capital brought in by a partner of the firm is meant to be utilized by the firm and is not repayable by the firm. It is not a loan to the firm. It is, therefore, the partner's sole liability to repay the loan taken by that partner to bring it as the capital of the firm. The loan was, therefore, repayable only by Jayshree Shah who brought the said amount as the firm's capital.

6. The Plaintiffs contend that the averments in paragraphs 9 (c) and 9(g) show that the amount was received by the Firm. This admission requires a judgment to be passed against the Defendants for the payment of the said amount.

7. The averments in paragraph 9 only show the receipt of the capital amount and the mode in which it was brought into the Firm. The capital of the Firm is not an amount which is liable to be repaid. If it is the capital of the Firm, it has to be utilized in the interest of the Firm and for the

contracts of the Firm. The averments do not show a mere bringing in of the capital. The averments in paragraph 9(g) further show how it has to be utilized and when and by whom it is to be repaid. Consequently, the averments in the said paragraph are not an admission of liability of the Defendants. They are only admissions of the fact that, that amount was received by one of the partners by way of her capital and was stated to be repaid by her individually. The Firm would not be liable to pay the amount of capital received.

8. Upon these averments, therefore, no unambiguous admission of liability of the Defendants to repay is made out. The repayment, as per the averments in the said paragraphs, is to be by the said partner and after the period mentioned therein. These averments do not merit a judgment to be passed before all the aspects relating to the dissolved partnership Firm of Defendant No.2 are considered. The liability of the partners of the dissolved Firm, if any, may

have to be considered in the Suit.

9. Consequently, no judgment on admission can be passed. Both the Notices of Motion are dismissed. No order as to costs.

10. Since the Plaintiffs have not filed any rejoinder, Mr.Saraogi, on their behalf, has been allowed to proceed on the basis of denials.

(SMT.ROSHAN DALVI, J.)